UNITED
NATIONS

A

General Assembly

Distr.
LIMITED

A/AC.86/INF/39
15 December 1992

ORIGINAL: ENGLISH

COMMITTEE ON APPLICATIONS FOR
REVIEW OF ADMINISTRATIVE
TRIBUNAL JUDGEMENTS
Fortieth session

INFORMATION CIRCULAR

I. DATE AND PLACE OF MEETING

1. The 1st meeting of the fortieth session of the Committee on Applications for Review of Administrative Tribunal Judgements will take place at United Nations Headquarters on Monday, 18 January 1993. The exact time and place of the meeting will be announced in the Journal of the United Nations. The provisional agenda for the session is to be found in document A/AC.86/R.241.

II. MEMBERSHIP OF THE COMMITTEE

2. Under article 11 of the statute of the United Nations Administrative Tribunal (see General Assembly resolution 957 (X) of 8 November 1955), the Committee is composed of Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly. The present membership of the Committee therefore comprises the following 29 Member States: Afghanistan, Austria, Belize, Benin, Bulgaria, Cape Verde, China, Comoros, Egypt, El Salvador, France, Gabon, Iran (Islamic Republic of), Ireland, Kuwait, Lesotho, Libyan Arab Jamahiriya, Nicaragua, Philippines, Romania, Russian Federation, Sri Lanka, Suriname, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Yemen.

III. PREVIOUS MEETINGS OF THE COMMITTEE AND DECISIONS TAKEN

3. Information concerning previous meetings of the Committee and decisions of the Committee at its first to thirty-ninth sessions is to be found in documents A/AC.86/INF/1-38.

4. At its thirty-ninth session, held on 30 March, 1, 2 and 9 April 1992, the Committee considered the following applications:

(a) Application of Mr. Hallin for a review of Administrative Tribunal Judgement No. 531 - Hallin v. the United Nations Joint Staff Pension Board;

(b) Application of Mr. Salinas for a review of Administrative Tribunal Judgement No. 530 - Salinas v. the Secretary-General of the United Nations;

(c) Application of Mr. Bentaleb for a review of Administrative Tribunal Judgement No. 539 - Bentaleb v. the Secretary-General of the United Nations;

(d) Application of Mr. Araim for a review of Administrative Tribunal Judgement No. 533 - Araim v. the Secretary-General of the United Nations;

(e) Application of Mr. Al-Atraqchi for a review of Administrative Tribunal Judgement No. 538 - Al-Atraqchi v. the Secretary-General of the United Nations;

(f) Application of Mr. Ibarria for a review of Administrative Tribunal Judgement No. 541 - Ibarria v. the Secretary-General of the United Nations;

(g) Application of Ms. Fallah for a review of Administrative Tribunal Judgement No. 545 - Fallah v. the Secretary-General of the United Nations.

5. After consideration of the aforementioned applications, the Committee decided, respectively, that there was not a substantial basis for the application of Messrs. Hallin, Salinas, Bentaleb, Araim, Al-Atraqchi, Ibarria and Ms. Fallah under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgements Nos. 531, 530, 539, 533, 538, 541 and 545.

6. The decisions of the Committee at its thirty-ninth session were formally announced at the meeting of the Committee held in public on 9 April 1992. They are contained in document A/AC.86/49.

IV. PURPOSE OF THE SESSION

A. Application received from Ms. Catherine Claxton

7. On 30 June 1992, the United Nations Administrative Tribunal rendered Judgement No. 560 in the case of Claxton v. the Secretary-General of the

United Nations. The official text of the judgement, in English and French, is to be found in document AT/DEC/560. The judgement was communicated to the parties on 31 July 1992.

8. The application from Ms. Claxton dated 30 September 1992, requesting a review of Judgement No. 560 rendered by the United Nations Administrative Tribunal in the case of Claxton v. the Secretary-General of the United Nations was received by the Secretary of the Committee on the same date.

9. On 14 December 1992, after translation of the application of Ms. Claxton into the official languages of the General Assembly, it was communicated in document A/AC.86/R.231 to all members of the Committee as well as to parties to the proceedings before the Administrative Tribunal, together with a copy of Administrative Tribunal Judgement No. 560 (AT/DEC/560). It should be mentioned that the application had attached to it four annexes which have not been circulated, since such circulation is not provided for in the rules of procedure of the Committee. Those documents may be examined in the office of the Secretary of the Committee (room S-3420I).

10. Comments of the Respondent submitted with respect to the application of Ms. Claxton in accordance with article V, paragraph 1, of the rules of procedure of the Committee are contained in document A/AC.86/R.232.

B. Application received from Mr. Mohammed Ali Al-Atraqchi

11. On 2 July 1992, the United Nations Administrative Tribunal rendered Judgement No. 565 in the case of Al-Atraqchi v. the Secretary-General of the United Nations. The official text of the judgement, in English and French, is to be found in document AT/DEC/565. The judgement was communicated to the parties on 6 August 1992.

12. The application from Mr. Al-Atraqchi dated 2 October 1992, requesting a review of Judgement No. 565 rendered by the United Nations Administrative Tribunal in the case of Al-Atraqchi v. the Secretary-General of the United Nations was received by the Secretary of the Committee on 5 October 1992.

13. On 14 December 1992, after translation of the application of Mr. Al-Atraqchi into the official languages of the General Assembly, it was communicated in document A/AC.86/R.233 to all members of the Committee as well as to parties to the proceedings before the Administrative Tribunal, together with a copy of Administrative Tribunal Judgement No. 565 (AT/DEC/565).

14. Comments of the Respondent submitted with respect to the application of Mr. Al-Atraqchi in accordance with article V, paragraph 1, of the rules of procedure of the Committee are contained in document A/AC.86/R.234.

C. Application received from Mr. Mohammed Al-Jaff

15. On 2 July 1992, the United Nations Administrative Tribunal rendered Judgement No. 562 in the case of Al-Jaff v. the Secretary-General of the United Nations. The official text of the judgement, in English and French, is to be found in document AT/DEC/562. The judgement was communicated to the parties on 10 August 1992.

16. The application from Mr. Al-Jaff dated 21 September 1992, requesting a review of Judgement No. 562 rendered by the United Nations Administrative Tribunal in the case of Al-Jaff v. the Secretary-General of the United Nations was received by the Secretary of the Committee on 7 October 1992. The application of Mr. Al-Jaff did not comply with the requirements set forth in article II, paragraph 2, of the rules of procedure of the Committee. Therefore, as provided for in article III, paragraph 2, of the rules of procedure of the Committee, on 15 October 1992 the application was returned to Mr. Al-Jaff and to the counsel nominated by Mr. Al-Jaff on 13 October 1992 to act on his behalf before the Committee, with a request that it be corrected and resubmitted within three weeks from the date of its return. On 4 November 1992, a corrected application of Mr. Al-Jaff dated 3 November 1992 for review of Judgement No. 562 - Al-Jaff v. the Secretary-General of the United Nations - was received by the Secretary of the Committee.

17. On 14 December 1992, after translation of the application of Mr. Al-Jaff into the official languages of the General Assembly, it was communicated in document A/AC.86/R.235 to all members of the Committee as well as to parties to the proceedings before the Administrative Tribunal, together with a copy of Administrative Tribunal Judgement No. 562 (AT/DEC/562). It should be mentioned that the application had attached to it one annex which has not been circulated, since such circulation is not provided for in the rules of procedure of the Committee. That document may be examined in the office of the Secretary of the Committee (room S-3420I).

18. Comments of the Respondent submitted with respect to the application of Mr. Al-Jaff in accordance with article V, paragraph 1, of the rules of procedure of the Committee are contained in document A/AC.86/R.236.

D. Application received from Mr. Omor Faruq

19. On 30 June 1992, the United Nations Administrative Tribunal rendered Judgement No. 558 in the case of Faruq v. the Secretary-General of the United Nations. The official text of the judgement, in English and French, is to be found in document AT/DEC/558. The judgement was communicated to the parties on 10 August 1992.

20. The application from Mr. Faruq dated 8 October 1992, requesting a review of Judgement No. 558 rendered by the United Nations Administrative Tribunal in the case of Faruq v. the Secretary-General of the United Nations was received by the Secretary of the Committee on 19 October 1992. The application of

Mr. Faruq did not comply with the requirements set forth in article II, paragraph 2, of the rules of procedure of the Committee. Therefore, as provided for in article III, paragraph 2, of the rules of procedure of the Committee, on 20 October 1992 the application was returned to Mr. Faruq with a request that it be corrected and resubmitted within three weeks from the date of its return. On 4 November 1992, a corrected application of Mr. Faruq dated 31 October 1992 for review of Judgement No. 558 - Faruq v. the Secretary-General of the United Nations - was received by the Secretary of the Committee.

21. On 14 December 1992, after translation of the application of Mr. Faruq into the official languages of the General Assembly, it was communicated in document A/AC.86/R.237 to all members of the Committee as well as to parties to the proceedings before the Administrative Tribunal, together with a copy of Administrative Tribunal Judgement No. 558 (AT/DEC/558). It should be mentioned that the application had attached to it 18 annexes which have not been circulated since such circulation is not provided for in the rules of procedure of the Committee. Those documents may be examined in the office of the Secretary of the Committee (room S-3420I).

22. Comments of the Respondent submitted with respect to the application of Mr. Faruq in accordance with article V, paragraph 1, of the rules of procedure of the Committee are contained in document A/AC.86/R.238.

E. Application received from Ms. Selamawit Makonnen

23. On 26 June 1992, the United Nations Administrative Tribunal rendered Judgement No. 555 in the case of Selamawit Makonnen v. the Secretary-General of the United Nations. The official text of the judgement, in English and French, is to be found in document AT/DEC/555. The judgement was communicated to the parties on 21 August 1992.

24. The application from Ms. Makonnen dated 16 October 1992, requesting a review of Judgement No. 555 rendered by the United Nations Administrative Tribunal in the case of Makonnen v. the Secretary-General of the United Nations was received by the Secretary of the Committee on 21 October 1992. The application of Ms. Makonnen did not comply with the requirements set forth in article II, paragraph 2, of the rules of procedure of the Committee. Therefore, as provided for in article III, paragraph 2, of the rules of procedure of the Committee, on 26 October 1992 the application was returned to Ms. Makonnen with a request that it be corrected and resubmitted within three weeks from the date of its return. A corrected application of Ms. Makonnen, dated 13 November 1992, requesting a review of Judgement No. 555 - Selamawit Makonnen v. the Secretary-General of the United Nations - was received by the Secretary of the Committee on the same date.

25. On 14 December 1992, after translation of the application of Ms. Makonnen into the official languages of the General Assembly, it was communicated in document A/AC.86/R.239 to all members of the Committee as well as to parties

to the proceedings before the Administrative Tribunal, together with a copy of Administrative Tribunal Judgement No. 555 (AT/DEC/555). It should be mentioned that the application had attached to it 15 annexes which have not been circulated, since such circulation is not provided for in the rules of procedure of the Committee. Those documents may be examined in the office of the Secretary of the Committee (room S-3420I).

26. Comments of the Respondent submitted with respect to the application of Ms. Makonnen in accordance with article V, paragraph 1, of the rules of procedure of the Committee are contained in document A/AC.86/R.240.

F. General provisions

27. The official dossiers of the Administrative Tribunal in the cases of Ms. Claxton, Messrs Al-Atraqchi, Al-Jaff, Faruq and Ms. Makonnen are on file with the Secretary of the Committee in room S-3420I and may be examined on request by members of the Committee.

28. Under article 11, paragraph 2, of the statute of the Administrative Tribunal, the Committee shall decide within 30 days from receipt of each of the above-mentioned applications whether or not there is a substantial basis for such application. If the Committee decides that such a basis exists, it shall request an advisory opinion of the International Court of Justice. Under article II, paragraph 4, the Committee is authorized by the General Assembly, for the purposes of the article, to request an advisory opinion of the Court. According to the provisions of article VII of the rules of procedure of the Committee, it shall be convened for the consideration of the application no later than 25 days from the date of the receipt of the application. Under article II, paragraph 1 (c), of the same rules, the date of receipt by the Committee of an application is the date two weeks after the copies of the application are dispatched to the members of the Committee by its Secretary.

V. TERMS OF REFERENCE AND RULES OF PROCEDURE

29. The terms of reference of the Committee are contained in article 11 of the statute of the United Nations Administrative Tribunal. That article was added to the statute by General Assembly resolution 957 (X) of 8 November 1955. Its text is as follows:

"Article 11

"1. If a Member State, the Secretary-General or the person in respect of whom a judgement has been rendered by the Tribunal (including anyone who has succeeded to that person's rights on his death) objects to the judgement on the ground that the Tribunal has exceeded its jurisdiction or competence or that the Tribunal has failed to exercise jurisdiction

vested in it, or has erred on a question of law relating to the provisions of the Charter of the United Nations, or has committed a fundamental error in procedure which has occasioned a failure of justice, such Member State, the Secretary-General or the person concerned may, within thirty days from the date of the judgement, make a written application to the Committee established by paragraph 4 of this article asking the Committee to request an advisory opinion of the International Court of Justice on the matter.

"2. Within thirty days from the receipt of an application under paragraph 1 of this article, the Committee shall decide whether or not there is a substantial basis for the application. If the Committee decides that such a basis exists, it shall request an advisory opinion of the Court, and the Secretary-General shall arrange to transmit to the Court the views of the person referred to in paragraph 1.

"3. If no application is made under paragraph 1 of this article, or if a decision to request an advisory opinion has not been taken by the Committee, within the periods prescribed in this article, the judgement of the Tribunal shall become final. In any case in which a request has been made for an advisory opinion, the Secretary-General shall either give effect to the opinion of the Court or request the Tribunal to convene specially in order that it shall confirm its original judgement, or give a new judgement, in conformity with the opinion of the Court. If not requested to convene specially, the Tribunal shall at its next session confirm its judgement or bring it into confirmity with the opinion of the Court.

"4. For the purpose of this article, a Committee is established and authorized under paragraph 2 of Article 96 of the Charter to request advisory opinions of the Court. The Committee shall be composed of the Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly. The Committee shall meet at United Nations Headquarters and shall establish its own rules.

"5. In any case in which award of compensation has been made by the Tribunal in favour of the person concerned and the Committee has requested an advisory opinion under paragraph 2 of this article, the Secretary-General, if satisfied that such person will otherwise be handicapped in protecting his interests, shall within fifteen days of the decision to request an advisory opinion make an advance payment to him of one third of the total amount of compensation awarded by the Tribunal less such termination benefits, if any, as have already been paid. Such advance payment shall be made on condition that, within thirty days of the action of the Tribunal under paragraph 3 of this article, such person shall pay back to the United Nations the amount, if any, by which the advance payment exceeds any sum to which he is entitled in accordance with the opinion of the Court."

30. At its 1st meeting, on 16 October 1956, the Committee adopted its rules of procedure, which were later amended on 25 October 1956, 21 January 1957, 11 December 1974, 16 February 1983 and 30 July 1991. The current text of the rules of procedure of the Committee is contained in document A/AC.86/2/Rev.4.

31. In accordance with article VIII of the rules of procedure of the Committee all its deliberations, including the adoption of all decisions concerning applications, shall take place in private. The decisions of the Committee and the text of any questions to be addressed to the International Court of Justice, as well as the results of and the participants in any votes taken during the private deliberations, shall be formally announced in a public meeting, at which any member of the Committee may make a statement for the record. As provided in article XII of the rules of procedure of the Committee, sound recordings shall be prepared and kept of all proceedings of the Committee, in accordance with the practice of the United Nations. If the Committee requests an advisory opinion of the International Court of Justice in respect of an application, the Secretary, in accordance with paragraph 2 of article XII of the rules of procedure, shall prepare and transmit to the Court, to all members of the Committee and to the parties to the proceedings before the Administrative Tribunal, a verbatim record, in English and French, of the proceedings of the Committee in respect of that application, except for those in the private deliberations provided for in paragraph 3 of article VIII.

VI. INQUIRIES

32. Inquiries may be addressed to the Secretary of the Committee, room S-3420I, extension 35347.